

EXHIBIT H



September 11, 2024

Daniel Edgington
FOIA Public Liaison
ICE FOIA Office
500 12th St. SW
Washington, DC 20536
ice-foia@dhs.gov

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900
GILDFOIAAppeals@ice.dhs.gov

SUBMITTED VIA EMAIL

RE: ICE FOIA 2024-ICFO-54792
Request for Review/Determination of Fee Waiver and Expedited Processing
Request; FOIA Appeal

Dear Officer:

We write regarding the ACLU's Freedom of Information Act ("FOIA") request, sent and received on September 4, 2024, and assigned number **ICE FOIA 2024-IFCO-54792**, which requested:

All documents submitted in response to a Request for Information ("RFI") titled "Multi-State Detention Facility Support - Request for Information," with Notice ID "2024ICEMULTISTATE," originally issued by U.S. Immigration and Customs Enforcement ("ICE") on August 14, 2024, to for available detention facilities in areas covered by the Phoenix, El Paso, Seattle, and San Francisco Enforcement and Removal Operations ("ERO") Field Offices. *See* Exhibit A, Sam.gov, Multi-State Detention Facility Support-Request for Information.¹

The ACLU's FOIA request also included a request for a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d).

¹ Exhibit A, Sam.gov, *ICE West Coast Multi-State RFI*, <https://sam.gov/opp/b062f46b8208474f807af0a75e0d320f/view> [https://perma.cc/6NZD-ME34], and attachment, "West+Coast+Multi+State+RFI.doc".

On September 10, 2024, the ICE FOIA Office responded, confirming receipt of the request. The response did not explicitly respond to the ACLU's request for a fee waiver, nor to the ACLU's request for expedited processing. The response, however, stated that "[w]e shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters." *See* Email from ICE FOIA Office, Sept. 10, 2024. To the extent that the request for a fee waiver was denied, the ACLU appeals that decision pursuant to 5 U.S.C. § 552(a)(6); if the fee waiver request was not denied, the ACLU objects to a charge for search and duplication of these records, and requests a review and determination of the fee waiver request.

The ICE FOIA Office's response also failed to provide any response or determination regarding the ACLU's request for expedited processing of the request. *See* Email from ICE FOIA Office, Sept. 10, 2024. To the extent that the request for expedited processing was also denied, the ACLU appeals that decision pursuant to 5 U.S.C. § 552(a)(6); if the expedited processing request was not denied, the ACLU requests a review and determination of that request.

A copy of the ICE FOIA Office's September 10, 2024 letter is attached.

A. Request for Fee Waiver

As discussed in the ACLU's FOIA Request, disclosure of the requested records is in the public interest and "likely to contribute significantly to public understanding of the operations or activities of the government," and "not primarily in the commercial interests of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

Disclosure of the information sought in the Request will contribute significantly to the public's understanding of ICE's plans to expand immigration detention in new facilities nationwide. ICE's plans to expand and establish new immigration detention facilities through the RFI and solicitation notices have prompted active concern and attention from Congress, the media, and advocates. In recent weeks, members of Congress have written multiple letters to the Department of Homeland Security raising concern about potential expansion of the immigration detention system, and urging DHS and ICE to reject contracts with for-profit prison corporations for detention. For example, ten senators wrote to DHS and ICE on May 14, 2024, urging the agency to recommit to phasing out ICE's use of private, for-profit detention facilities.² On July 16, 2024, U.S. Representatives from Washington State, including Pramila Jayapal and Adam Smith, wrote a letter to DHS calling for the phase out of the use of private, for-profit detention centers for immigrants and consider alternatives to expanding the immigration detention system.³

² Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [https://perma.cc/EJ5T-HC4L].

³ Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf>.

Multiple national news outlets have covered ICE's recent plans "for an expansion of ICE's . . . detention capabilities,"⁴ to "increase overall detention capacity" and "expand detention bed space,"⁵ and to "pay for more detention space following President Biden's executive action on the border."⁶ Local media outlets have similarly covered decisions to expand or close immigration detention facilities in the areas identified by the RFI and solicitation notices.⁷ Advocates have likewise raised concern with ICE's efforts to expand detention: on July 11, 2024, over 200 immigrant rights organizations sent a letter to DHS urging the administration to halt ICE's detention expansion efforts.⁸ Disclosure of the information sought in the Request will contribute significantly to the public's understanding of ICE's plans to expand immigration detention in new facilities nationwide.

ICE routinely grants the ACLU fee waivers in its FOIA requests, including those related to immigration detention. ICE has not indicated any reason as to why this request should be any different. *See, e.g.* ICE FOIA Case No. 2020-ICFO-16550, Jan. 9, 2020 (granting fee waiver to ACLU for FOIA request to ICE regarding detention contracts); ICE FOIA Case No. 2020-

⁴ Rafael Bernal, *Biden Administration's Immigrant Detention Moves Highlight Strained System*, The Hill, Jun. 15, 2024, <https://thehill.com/homenews/administration/4723342-biden-administration-immigrant-detention-moves-highlight-strained-system/>.

⁵ Ted Hesson, *U.S. To Close Costly Texas Immigration Detention Center and Reroute Funds*, Reuters, Jun. 10, 2024, <https://www.reuters.com/world/us/us-close-costly-texas-immigration-detention-center-reroute-funds-2024-06-10/>.

⁶ Michelle Hackman, *Biden to Close 'Dilley' Detention Center, Shift Resources Amid Border Crackdown*, Wall St. Journal, Jun. 10, 2024, <https://www.wsj.com/politics/policy/biden-to-close-dilley-detention-center-shift-resources-amid-border-crack-down-2b2cfcb5>.

⁷ *See, e.g.* Susan Dunlap, *Legislator Introducing Bill to Prevent Immigrant Detention in New Mexico*, New Mexico Political Report, Jan. 19, 2024, <https://nmpoliticalreport.com/nmleg/legislator-introducing-bill-to-prevent-immigrant-detention-in-new-mexico/>; Morgan Lee, *County in Rural New Mexico Extends Agreement with ICE for Immigrant Detention Amid Criticism*, Associated Press, Apr. 24, 2024, <https://apnews.com/article/new-mexico-migrant-detention-facility-extension-032e5695f94490e6a2ff9b06b2cfc8da>; Nimra Ahmad, *Washington Representatives Call for the Closure of Private Immigration Detention Centers*, South Seattle Emerald, Jul. 18, 2024, <https://southseattleemerald.com/2024/07/18/washington-representatives-call-for-the-closure-of-private-immigration-detention-centers/>; Seattle Times Editorial Board, *Pass Dignity for Detained Immigrants Act for Greater Transparency*, Apr. 29, 2024, <https://www.seattletimes.com/opinion/editorials/pass-dignity-for-detained-immigrants-act-for-greater-transparency/>; Conrad Wilson, *NORCOR, Last Jail in Oregon to Hold Immigration Detainees, to End ICE Contract*, Oregon Public Broadcasting, Aug. 22, 2020, <https://www.opb.org/article/2020/08/21/northern-oregon-regional-correctional-facility-norcor-ice/>; Tim Gruver, *Last Jail in Oregon to House Immigration Detainees to End ICE Contract*, Oregonian, Aug. 25, 2020, <https://www.oregonlive.com/pacific-northwest-news/2020/08/last-jail-in-oregon-to-house-immigration-detainees-to-end-ice-contract.html>; Tyche Hendricks, *"Waste of Federal Funds": ICE Ends Contract with Northern California Jail after Years of Outrage Over Conditions*, KQED, Dec. 9, 2022, <https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions>; Deepa Fernandes, *Northern California Jail Reopens to Immigrant Detention*, Jan. 16, 2022, <https://www.sfchronicle.com/california/article/Northern-California-jail-reopens-to-immigrant-16765144.php>; Suzanne Gamboa, *Rep. Raul Grijalva Wants to End Privately Owned Prisons, Detention Centers*, NBC News, Feb. 11, 2021, <https://www.nbcnews.com/news/latino/rep-ra-l-grijalva-wants-end-privately-owned-prisons-immigrant-n1257339>; Ryan Knappenberger, *Ban on New Private Prison Contracts Will Not Reach ICE Detainees*, Cronkite News, Jan. 29, 2021, <https://cronkitenews.azpbs.org/2021/01/29/ban-on-new-private-prison-contracts-will-not-reach-ice-detainees/>.

⁸ Letter from 211 Immigrant Rights Organizations to DHS Sec. Mayorkas, *Pattern of Deteriorating Immigration Detention Conditions Amid Expansion Efforts*, Jul. 11, 2024, <https://www.detentionwatchnetwork.org/sites/default/files/NGO%20Letter%20regarding%20ICE%20Detention%20-%20July%202024.pdf> [https://perma.cc/MM6M-VPW3].

HQFO-01166, May 26, 2020 (granting fee waiver to ACLU for FOIA request regarding COVID-19 conditions in ICE detention); ICE FOIA Case No. 201-ICFO-14841, Jan. 11, 2018 (granting fee waiver to ACLU for FOIA request regarding segregation review management system in ICE detention); *see also*. *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 287 (D. Conn. 2012) (“organizations like the ACLU are regularly granted news representative status” for FOIA fee waivers); *Am. C.L. Union of Washington v. U.S. Dep't of Just.*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (similar). The ACLU has no commercial interest that would be furthered by the requested information.

B. Request for Expedited Processing

As discussed at length in the FOIA Request, the ACLU requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE’s active plans to expand immigration detention facilities in Arizona, New Mexico, Washington, Oregon, and Northern California.

Detention of noncitizens, and ICE’s decision to expand or end detention contracts, is a matter of significant government activity and public interest.⁹ Plans to expand or close detention facilities in the areas identified by the RFI is a matter of widespread media interest, which have closely followed and reported on local and national administrative measures to restrict detention,

⁹ *See, e.g.* Ted Hesson, Mica Rosenberg, and Kristina Cooke, *Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited*, Reuters, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07/>; Jose Olivares, *Investigators Wanted to Close an Abusive ICE Facility. Biden’s Administration Extended Its Contract*, The Appeal, Jul. 25, 2024, <https://theappeal.org/biden-admin-extended-contract-abusive-ice-detention-center/>; Austin Fisher, *Torrance County Commission Votes to Extend ICE Contract*, Source New Mexico, Apr. 25, 2024, <https://sourcenm.com/2024/04/25/torrance-county-commission-votes-to-extend-ice-contract/>; Allison Kite, *Shuttered Private Jail in Leavenworth Could Become ICE Detention Center*, Kansas Reflector, Sept. 6, 2023, <https://kansasreflector.com/2023/09/06/shuttered-private-jail-in-leavenworth-could-become-ice-detention-center/>; Jose Abonce, *ICE Detains Illinois Immigrants in Out-of-State Jails*, South Side Weekly, Dec. 6, 2023, <https://southsideweekly.com/ice-detains-chicago-immigrants-in-wisconsin-despite-illinois-way-forward-act/>.

close detention facilities, or open new facilities in Arizona,¹⁰ New Mexico,¹¹ Washington,¹² Oregon,¹³ and Northern California.¹⁴ Members of Congress—including those representing states where ICE has sought proposals for expanded immigration detention in this RFI—have repeatedly raised concerns about conditions of confinement, continued presence, use of private prison detention facilities, and expansion of detention with the Department of Homeland Security.¹⁵ The requested records will inform the public of activity by ICE and DHS. 5 U.S.C. § 552(a)(6)(E)(i)(I).

For these reasons, the ACLU respectfully requests review and determination of our request for a fee waiver and for expedited processing, or if the requests were denied, appeal the agency's denial.

We appreciate your prompt response. Please contact me at dgalindo@aclu.org with any questions.

¹⁰ See, e.g. Suzanne Gamboa, *Rep. Raul Grijalva Wants to End Privately Owned Prisons, Detention Centers*, NBC News, Feb. 11, 2021, <https://www.nbcnews.com/news/latino/rep-ra-l-grijalva-wants-end-privately-owned-prisons-immigrant-n1257339>; Ryan Knappenberger, *Ban on New Private Prison Contracts Will Not Reach ICE Detainees*, Cronkite News, Jan. 29, 2021, <https://cronkitenews.azpbs.org/2021/01/29/ban-on-new-private-prison-contracts-will-not-reach-ice-detainees/>.

¹¹ See, e.g. Susan Dunlap, *Legislator Introducing Bill to Prevent Immigrant Detention in New Mexico*, New Mexico Political Report, Jan. 19, 2024, <https://nmpoliticalreport.com/nmleg/legislator-introducing-bill-to-prevent-immigrant-detention-in-new-mexico/>; Morgan Lee, *County in Rural New Mexico Extends Agreement with ICE for Immigrant Detention Amid Criticism*, Associated Press, Apr. 24, 2024, <https://apnews.com/article/new-mexico-migrant-detention-facility-extension-032e5695f94490e6a2ff9b06b2cfc8da>.

¹² See, e.g. Nimra Ahmad, *Washington Representatives Call for the Closure of Private Immigration Detention Centers*, South Seattle Emerald, Jul. 18, 2024, <https://southseattleemerald.com/2024/07/18/washington-representatives-call-for-the-closure-of-private-immigration-detention-centers/>; Seattle Times Editorial Board, *Pass Dignity for Detained Immigrants Act for Greater Transparency*, Apr. 29, 2024, <https://www.seattletimes.com/opinion/editorials/pass-dignity-for-detained-immigrants-act-for-greater-transparency/>.

¹³ See, e.g. Conrad Wilson, *NORCOR, Last Jail in Oregon to Hold Immigration Detainees, to End ICE Contract*, Oregon Public Broadcasting, Aug. 22, 2020, <https://www.opb.org/article/2020/08/21/northern-oregon-regional-correctional-facility-norcor-ice/>; Tim Gruver, *Last Jail in Oregon to House Immigration Detainees to End ICE Contract*, Oregonian, Aug. 25, 2020, <https://www.oregonlive.com/pacific-northwest-news/2020/08/last-jail-in-oregon-to-house-immigration-detainees-to-end-ice-contract.html>.

¹⁴ See, e.g. Tyche Hendricks, *“Waste of Federal Funds”: ICE Ends Contract with Northern California Jail after Years of Outrage Over Conditions*, KQED, Dec. 9, 2022, <https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions>; Deepa Fernandes, *Northern California Jail Reopens to Immigrant Detention*, Jan. 16, 2022, <https://www.sfchronicle.com/california/article/Northern-California-jail-reopens-to-immigrant-16765144.php>;

¹⁵ Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [https://perma.cc/EJ5T-HC4L]; Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf> [https://perma.cc/Q5JD-PAC8]; Letter from 50 Members of Congress to DHS Secretary Alejandro Mayorkas, Feb. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/02/ICE-Detention-Closure-Letter-021624.pdf> [https://perma.cc/B4TV-75JZ].

Sincerely,

/s/ Dan Galindo

Dan Galindo
Staff Attorney
ACLU Immigrants' Rights Project

/s/ Eunice Cho

Eunice Cho
Sr. Staff Attorney
ACLU National Prison Project

From: ice-foia@ice.dhs.gov
To: [Daniel Galindo](#)
Subject: ICE FOIA 2024-ICFO-54792
Date: Tuesday, September 10, 2024 4:21:03 PM

This Message Is From an External Sender

This message came from outside your organization.

09/10/2024

Daniel Galindo
125 Broad Street
New York, New York 1004

RE: ICE FOIA Case Number 2024-ICFO-54792

Dear Requester:

This acknowledges receipt of your 9/4/2024, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for records pertaining to the disclosure of records submitted in response to a Request for Information ("RFI") titled "ICE West Coast Multi-State RFI," originally issued by U.S. Immigration and Customs Enforcement ("ICE") on August 14, 2024, for "available detention facilities for single adult populations (male and female)" in areas covered by the Phoenix, El Paso, Seattle, and San Francisco Enforcement and Removal Operations ("ERO") Field Offices, to include facilities in Arizona, New Mexico, Washington, Oregon, and Northern California. Your request was received in this office on 9/4/2024.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you're able to narrow the scope of your request please contact our office. Narrowing the scope may speed up the search process. We will make every effort to comply with your request in a timely manner.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you

will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

If you have any questions, please contact FOIA Public Liaison, Daniel Edgington at 500 12th Street, SW, Washington DC 20536 or (866) 633-1182. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

Your request has been assigned reference number 2024-ICFO-54792. Please use this number in future correspondence.

Sincerely,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009